

**81045. Misbranding of canned cherries. U. S. v. 235 Cases of Red Pitted Cherries. Product adjudged misbranded and ordered released under bond to be relabeled. (F. & D. No. 45583. Sample No. 67114-D.)**

This product was substandard because of the presence of excessive pits, and it was not labeled to indicate that it was substandard.

On January 2, 1940, the United States attorney for the Western District of Oklahoma, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 235 cases of canned cherries at El Reno, Okla.; alleging that the article had been transported in interstate commerce on or about August 5, 1939, by the El Reno Wholesale Grocery Co. from Canon City, Colo., in their own truck; and charging that it was misbranded in violation of the Food and Drugs Act. It was labeled in part: (Can) "True Blue Choice Water Pack Red Pitted Cherries \* \* \* Packed By Colorado Packing Plant, Canon City, Colo."

The article was alleged to be misbranded in that it was canned food and fell below the standard of quality and condition promulgated by the Secretary of Agriculture, since it was not pitted in that there was present more than 1 cherry pit per each 20 ounces of net contents, and its package label did not bear a plain and conspicuous statement prescribed by regulation of this Department, indicating that it fell below such standard.

On January 19, 1940, Colorado Packing Plant, claimant, having admitted the allegations of the libel, a decree was entered finding that the product was misbranded and should be condemned, and ordering that it might be released under bond conditioned that it be relabeled under the supervision of this Department.

GROVER B. HILL, *Acting Secretary of Agriculture.*

**81046. Misbranding of canned tomatoes. U. S. v. 97 Cases of Canned Tomatoes. Default decree of condemnation. Product ordered delivered to charitable institutions. (F. & D. No. 45586. Sample No. 75571-D.)**

This product was substandard because it was not normally colored, and it was not labeled to indicate that it was substandard.

On or about January 29, 1940, the United States attorney for the Eastern District of Kentucky, acting upon a report by the Secretary of Agriculture, filed a libel praying seizure and condemnation of 97 cases of canned tomatoes at Middlesboro, Ky.; alleging that the article had been shipped in interstate commerce on or about October 23, 1939, by J. S. Chittum from New Tazewell, Tenn.; and charging that it was misbranded in violation of the Food and Drugs Act. It was labeled in part: "Blue Bird Brand Hand Packed Tomatoes."

Misbranding was alleged in that the article was canned food and fell below the standard of quality and condition promulgated by the Secretary of Agriculture, since it was not normally colored, and its package or label did not bear a plain and conspicuous statement prescribed by regulation of this Department indicating that it fell below such standard.

On March 1, 1940, no claimant having appeared, judgment of condemnation was entered, and it was ordered that the product be delivered to charitable institutions in view of the fact that it was not deleterious nor unfit for human consumption.

GROVER B. HILL, *Acting Secretary of Agriculture.*

**81047. Misbranding of canned cherries. U. S. v. 360 Cases of Canned Cherries. Product ordered released under bond for relabeling. (F. & D. No. 45579. Sample No. 47871-D.)**

This product was substandard because of the presence of excessive pits, and it was not labeled to indicate that it was substandard.

On December 6, 1939, the United States attorney for the Western District of Virginia, acting upon a report by the Secretary of Agriculture, filed in the district court a libel against 360 cases of canned cherries; alleging that the article had been shipped in interstate commerce on or about September 7, 1939, by the W. N. Clark Co. from Rochester, N. Y.; and charging that it was misbranded in violation of the Food and Drugs Act. It was labeled in part: "Harmony Brand Red Sour Pitted Cherries in Water."

Misbranding was alleged in that the article was canned food and fell below the standard of quality and condition promulgated by the Secretary of Agriculture, since there was present more than 1 cherry pit per 20 ounces of net contents, and its package or label did not bear a plain and conspicuous statement prescribed by regulation of this Department indicating that it fell below such standard.